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FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 7041
DATE COMPLAINT FILED: April 13, 2016
DATE OF NOTIFICATION: April 20, 2016
DATE OF LAST RESPONSE: May 9, 2016
DATE ACTIVATED: June 2, 2016

ELECTION CYCLES: 2012-2016
EARLIEST SOL: June 25, 2016
LATEST SOL: July 30, 2021

COMPLAINANT:

Mark Gilliam

RESPONDENTS:

United Association of Journeymen and Apprentices
of the Plumbing and Pipefitting Industry of the
United States and Canada Local 469

Arizona Pipe Trades Local 469 and Aaron Butler in
his official capacity as treasurer

Arizona Pipe Trades Local 469 PAC and Phillip
McNally in his official capacity as treasurer

United Association of Plumbers and Pipefitters
Local 469 Federal Political Action Committee
(Arizona Pipe Trades Fed. PAC) and Aaron
Butler in his official capacity as treasurer

Aaron Butler

Phillip McNally

Israel G. Torres

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30101(4)(B)
52 U.S.C. § 30103
52 U.S.C. § 30104(a)
52 U.S.C. § 30118(b)
11 C.F.R. § 100.5(b)
11 C.F.R. § 102.1(c)
11 C.F.R. § 102.5(a)(1)
11 C.F.R. § 114.5(a)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

11-04454-1000

I. INTRODUCTION

The Complaint in this matter makes two principal allegations against the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada Local 469 ("Local 469") and three connected political committees ("PACs"), including a state-registered PAC, a current federal PAC, and a now-terminated federal PAC. First, it alleges that Local 469's state committee triggered federal political committee status in 2011, but failed to register or file disclosure reports with the Federal Election Commission (the "Commission") at that time.¹ Second, the Complaint contends that Local 469 and its three committees have coercively solicited contributions from members since at least 2011.²

Our review indicates that Local 469's state committee likely triggered federal political committee status in 2011 by making a \$500 contribution to a federal candidate, and failed to timely register or report with the Commission. However, for the reasons discussed below, we believe the claim does not merit use of additional Commission resources and recommend that the Commission dismiss the allegation as a matter of prosecutorial discretion and issue a letter of caution to the Local 469 and its state committee.

¹ Compl. at 5 (Apr. 13, 2016).

² *Id.* at 5-18. The Complaint makes a third allegation that a lawyer and consultant for Local 469, Israel G. Torres, and the treasurers of each respondent committee "participated in a scheme to transfer illegally coerced member contributions made to the Plumbers Local 469 PACs, to PACs controlled by Israel G. Torres." *Id.* at 18. The Complaint continues that once Local 469 member contributions "are in the hands of [] Torres and his PACs, those funds can be, and were used, any way Israel G. Torres saw and continues to see fit, and without any authority, oversight or supervision by the members of Plumbers Local 469 and with very limited public disclosure." *Id.*

On its face, this information does not appear to state a violation of the Federal Election Campaign Act of 1971, as amended (the "Act"), and to apply any portion of the Act or Commission regulations would require the Office of General Counsel ("OGC") to speculate as to facts not currently part of the record. Accordingly, OGC makes no recommendation as to this alleged information.

1 However, the present record also indicates that, since at least 2011, Local 469 and its
2 political committees have coerced union members to make contributions through various means.
3 Because the scope of the alleged solicitations is significant, we recommend that the Commission
4 find reason to believe the Local and its current federal committee violated 52 U.S.C. §
5 30118(b)(3) and 11 C.F.R. § 114.5(a).

6 **II. FACTUAL AND LEGAL ANALYSIS**

7 **A. Local 469's Arizona State PAC Likely Failed to Timely Register and Report**
8 **as a Federal Political Committee, but Such Failures Do Not Merit Use of**
9 **Additional Commission Resources at This Time**

10 Local 469 is a labor organization affiliated with the United Association of Journeymen
11 and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada.³ The
12 Local maintains separate segregated funds ("SSFs") for the purpose of engaging in federal and
13 non-federal political activity and has registered at least three connected political committees in
14 recent years.⁴

15 The first of these committees, known as Arizona Pipe Trades 469 ("Arizona State PAC"),
16 has been registered with the Arizona Secretary of State as an Arizona political action committee
17 since 1991.⁵ The Complaint alleges that the Arizona State PAC triggered federal committee
18 status in 2011 by raising and spending money to influence federal elections and identifies five
19 contributions to federal candidates that the Arizona State PAC reported to the Arizona Secretary

³ *Id.* at 2; *see also* Amended Statement of Org., Local Union No. 469 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the U.S. & Canada PAC (Arizona Pipe Trades Local 469 PAC) (Sept. 10, 2012), <http://docquery.fec.gov/pdf/834/12952875834/12952875834.pdf> (amending Statements of Org. filed Apr. 5, 2012 and July 19, 2012).

⁴ Resp. at 1-2 (May 17, 2016); Compl. at 2-3.

⁵ Search Results for Arizona Pipe Trades 469, ARIZ. SEC. OF STATE, <http://apps.azsos.gov/apps/election/cfs/search/AdvancedSearch.aspx> (listing Aug. 29, 1991 as committee registration date).

1 of State between 2011 and 2014.⁶ The Complaint also states that in 2011, the union
2 implemented a new payroll deduction authorization ("check off") form that asks members to
3 authorize contributions "[s]o that the common interests of Local 469 members . . . can be heard
4 by state *and federal* politicians."⁷

5 The Act and Commission regulations provide that any SSF established under 52 U.S.C.
6 § 30118(b) is a political committee,⁸ and that any SSF shall register with the Commission within
7 10 days after establishment, except where the SSF is established solely for the purpose of
8 financing political activity in connection with state or local elections.⁹ An SSF formed
9 exclusively for the purpose of participating in state and local elections is not required to register
10 with the Commission; however, if at any time the connected organization decides to use the SSF,
11 wholly or in part, to influence federal elections, it must register with the Commission within ten
12 days of the decision to do so and before it makes any contributions to federal candidates.¹⁰
13 When an organization finances both federal and non-federal political activity, it may use separate

⁶ Compl. at 5 and Ex. 1. OGC has identified an additional eleven contributions to federal candidates disclosed on the Arizona State PAC's state reports between 2011 and 2014. See Search Results for Arizona Pipe Trades, ARIZ. SEC. OF STATE, <http://apps.azsos.gov/apps/election/cfs/search/CommitteeSearch.aspx> (showing that, on Schedule E3, Contributions to Other Committees, the Arizona State PAC reported sixteen total contributions to federal candidate committees during the 2012 and 2014 election cycles).

⁷ Compl. Exs. 3-4 (emphasis added); see also *infra* Part II.B (further describing the solicitation contained in Local 469's payroll deduction authorization form).

⁸ 52 U.S.C. § 30101(4)(B); 11 C.F.R. § 100.5(b).

⁹ 52 U.S.C. § 30103; 11 C.F.R. § 102.1(c).

¹⁰ 11 C.F.R. § 102.1(c) ("Examples of establishment events after which a fund would be required to register include, but are not limited to: A vote by the board of directors or comparable governing body of an organization to create a [SSF] to be used wholly or in part for federal elections"); Advisory Op. 1985-18 at 2-3 (Michigan Auto Club PAC) ("AO 1985-18") (opining that an SSF previously used exclusively for non-federal political activity could expand its operations to include federal political activity, provided that: (1) the combined state/federal SSF registered as a federal political committee within 10 days of the decision to influence federal elections and before making any federal contributions; and (2) all contributions the SSF received complied with the limits and prohibitions of the Act).

1 accounts for each type of activity¹¹ or a single account for both.¹² If the organization elects to
2 use a single account, all contributions received are subject to the limits and prohibitions of the
3 Act, regardless of the purpose for which they are used.¹³

4 The Respondents acknowledge that the Arizona State PAC made contributions to federal
5 candidates, but assert that the committee was concurrently registered and reporting with the
6 Commission. Respondents explain that, beginning in 2012, Local 469 sought to expand the
7 Arizona State PAC's activities to include federal contributions.¹⁴ At that time, the Arizona State
8 PAC registered as a federal political committee known as Arizona Pipe Trades Local 469 PAC
9 ("Arizona Pipe Trades Federal PAC")¹⁵ to comply with the Act and Commission regulations.¹⁶
10 The Arizona State PAC remained registered in Arizona and continued to engage in non-federal
11 activity.¹⁷ Thus, during this period, the Local used a single account — known at the state level
12 as the Arizona State PAC and at the federal level as the Arizona Pipe Trades Federal PAC — to
13 simultaneously engage in federal and non-federal activity. During this period of dual
14 registration,¹⁸ the SSF accepted only contributions subject to the limits and prohibitions of the

¹¹ 11 C.F.R. § 102.5(a)(i).

¹² 11 C.F.R. § 102.5(a)(ii).

¹³ *Id.*

¹⁴ Resp. at 1-2.

¹⁵ Statement of Org., Arizona Pipe Trades Local 469 PAC (Apr. 5, 2012),
<http://docquery.fec.gov/pdf/196/12030763196/12030763196.pdf>, (amended July 19, 2012 and Sept. 10, 2012).

¹⁶ See 11 C.F.R. §§ 102.1(c), 102.5(a)(ii).

¹⁷ Under Arizona state law, an SSF established by a labor organization for political purposes is a state political committee and must register with the Secretary of State as such if it intends to receive contributions or make expenditures of more than \$500, ARIZ. REV. STAT. §§ 16-901(20)(b), 16-902.02, even if the SSF is registered in another state or pursuant to federal law, see ARIZ. REV. STAT. § 16-902.02.

¹⁸ The Arizona State PAC terminated its federal registration on January 15, 2015 but continues to operate as an Arizona political committee. Termination Approval, Arizona Pipe Trades Local 469 PAC (Jan. 15, 2015), <http://docquery.fec.gov/pdf/196/15330072196/15330072196.pdf>. Seven months later, on August 14, 2015, Local 469 registered its third committee, a new connected federal political committee known as the United Association of Plumbers and Pipefitters Local 469 Federal PAC ("Arizona Pipe Trades Fed PAC"). Statement of Organization,

1 Act,¹⁹ and appears to have reported all activity to both the Arizona Secretary of State and the
2 Commission.²⁰

3 Respondents acknowledge that even under this timeline, one of the contributions
4 identified by the Complaint — \$500 given to Kirkpatrick for Arizona on June 15, 2011 — was
5 made before the Arizona State PAC registered as a federal committee in April 2012.²¹ However,
6 Respondents state that when the Arizona State PAC became aware that it may have triggered
7 federal political committee status by doing so, it “immediately” requested a refund from
8 Kirkpatrick for Arizona.²² An exhibit attached to the Response shows that Kirkpatrick for
9 Arizona issued a refund on January 19, 2012, which the SSF received on January 30, 2012.²³

10 Given these facts, it appears that the Arizona State PAC triggered federal political
11 committee status in approximately June 2011 when it made a political contribution and also
12 began soliciting authorizations from its membership for federal political contributions. At that
13 time, it became subject to the Act’s registration and reporting requirements.²⁴ Nevertheless, the

United Association of Plumbers and Pipefitters Local 469 Federal Political Action Committee (Arizona Pipe Trades Fed PAC) (Aug. 14, 2015), <http://docquery.fec.gov/pdf/512/201508149000825512/201508149000825512.pdf>. The new federal committee is operated out of a separate account, pursuant to 11 C.F.R. § 102.5(a)(i).

¹⁹ 11 C.F.R. § 102.5(a)(1)(ii).

²⁰ All of the SSF’s federal contributions in the 2012 and 2014 cycles were reported to both the Arizona Secretary of State and the Commission. It is not possible to compare all contributions that the committee reported receiving, as Arizona and the Commission have different itemization thresholds; however the total amounts that each committee reported receiving appear to be approximately equal, as do the total expenditures each reported.

²¹ Resp. at 2-3.

²² *Id.*

²³ *Id.* Ex. 1.

²⁴ 52 U.S.C. §§ 30103; 30104(a). At that time, the SSF operated as a combined account for federal and non-federal activity pursuant to 11 C.F.R. 102.5(a)(1)(ii).

1 Arizona State PAC failed to register or report with the Commission until April 2012,²⁵ and in
2 doing so failed to file the 2011 July, October, and Year-End Quarterly Reports.²⁶

3 Notwithstanding, we do not believe it is worth the Commission's resources to pursue this
4 allegation further. At the outset, the statute of limitations expired on the Arizona State PAC's
5 failure to register as a federal political committee on June 15, 2016.²⁷ And although violations of
6 the quarterly reporting requirements remain, the state committee registered with the Commission
7 roughly nine months later, made no other federal contributions in the intervening period, and
8 disclosed all of its transactions to the public via its registration as the Arizona State PAC and its
9 disclosures to the Arizona Secretary of State.²⁸ We therefore recommend that the Commission
10 dismiss as a matter of prosecutorial discretion the allegation that Local 469 and the Arizona State
11 PAC violated 52 U.S.C. §§ 30103 and 30104(a) and 11 C.F.R. § 102.1(c) and issue a letter of
12 caution.

²⁵ Because Commission precedent specifies that a non-federal committee must register *before* making any contributions, the SSF's ultimate registration with the Commission on April 5, 2012 was likely also untimely, as it came four days after its next contribution to a federal candidate, on April 1, 2012.

²⁶ See 52 U.S.C. § 30104(a)(4). The Complaint also alleges that the Arizona Pipe Trades Federal PAC also failed to update its treasurer of record when the treasurer of the committee, Phillip McNally, resigned his position as business manager of Local 469 in July 2014. Compl. at 4. Complainant believes that the Local's new business manager, Aaron Butler, should have designated as treasurer of the committee at that time. *Id.* However, the Complaint presents no information to indicate that McNally did not continue to fulfill the duties of committee treasurer after he resigned as business manager of the union. Indeed, the committee's reports continued to bear McNally's name and signature until its termination in January 2015. Absent additional information to show that McNally's resignation as business manager resulted in someone else fulfilling the duties of committee treasurer, we make no recommendation as to this allegation.

²⁷ 52 U.S.C. § 30145.

²⁸ We also note that Respondents sought a refund to "remedy" their actions triggering federal political status. This appears to be a good-faith attempt to correct its failure to timely register and report. Nevertheless, Commission precedent indicates that it is the decision to influence federal elections — and not the contribution itself — that gives rise to an SSF's federal political committee status. See 11 C.F.R. § 102.1(c); Advisory Op. 1985-18. Here, certain information suggests that Respondents did not change their mind about participating in federal elections, but merely sought to walk back the contribution. Notably, the SSF re-contributed the refunded \$500 to Kirkpatrick for Arizona less than three months after it received its refund, even stating on its July 2012 Quarterly Report that the purpose of the disbursement was "Original Transaction 6/15/11 Contribution." If true, and the SSF's decision to influence federal elections remained unchanged, the refund of the contribution would not relieve the SSF of the Act's registration requirements.

B. Local 469 Coercively Solicited Member Contributions to Its Separate Segregated Fund Through Various Means

The Complaint further alleges that Local 469 and its committees have coercively solicited contributions from union members since at least 2011. According to the Complaint, Respondents made coercive solicitations by: (1) threatening reprisal against non-contributors in a union magazine; (2) using a check-off form that lacked sufficient notices to ensure the voluntariness of member contributions; and (3) maintaining a non-contributor list that was displayed at union meetings where verbal solicitations were made.²⁹

The Act and Commission regulations prohibit labor organizations from making contributions in connection with a federal election.³⁰ A labor organization may establish an SSF for the purpose of engaging in federal political activity,³¹ but the labor organization may only solicit contributions to the SSF from members and their families.³² All such contributions must be voluntary,³³ and the SSF may not make contributions or expenditures using "money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of membership."³⁴

In addition, the Act and Commission regulations require persons soliciting contributions to inform members at the time of the solicitation of the political purposes of the SSF and of the

²⁹ Compl. at 5.

³⁰ 52 U.S.C. § 30118(a); 11 C.F.R. § 114.2(b).

³¹ 52 U.S.C. § 30118(b)(2)(c).

³² 52 U.S.C. § 30118(b)(4)(A)(ii).

³³ 52 U.S.C. § 30118(b)(3)(A); 11 C.F.R. § 114.5(a).

³⁴ 52 U.S.C. § 30118(b)(3)(A); 11 C.F.R. § 114.5(a).

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1 member's right to refuse to contribute without reprisal.³⁵ Further, if the labor organization
2 suggests an amount to be contributed, the solicitation must also state that the guideline is merely
3 a suggestion and that the individual is free to contribute more or less.³⁶ A solicitation may be
4 considered coercive if proper notices are not given.³⁷

5 The Commission has previously applied these provisions to union check-off forms, and
6 endorsed sample language that conforms with the "right to refuse"³⁸ and "suggested
7 contribution"³⁹ requirements. It has also applied these requirements to non-contributor lists. For
8 example, in MUR 5681 (High Point Association of Realtors), the Commission found that a trade
9 association violated the Act and Commission regulations by publishing in its monthly newsletter
10 a list of members who had "not yet" contributed to its political committee with the words "Have
11 you made your contribution?"⁴⁰ The Commission stated that, when paired with a solicitation, a
12 non-contributor list violates the Act and Commission regulations by failing to include the

³⁵ 52 U.S.C. § 30118(b)(3)(B)-(C); 11 C.F.R. § 114.5(a)(3)-(4).

³⁶ 11 C.F.R. § 114.5(a)(2).

³⁷ Conciliation Agreement at ¶7, MUR 5337 (First Nat'l Consumers Bank) ("A solicitation can also be coercive if proper notice is not given.").

³⁸ Advisory Opinion 2006-17 (Berkeley Electric Cooperative) ("AO 2006-17"). In that opinion, the Commission approved a sample checkoff card that: (1) asked members to affirm that they "voluntarily donate"; (2) contained a blank check box that allowed a member to choose "I elect not to participate at this time"; (3) and stated "I am also fully aware that should I elect not to participate I may do so without any concern of retaliation."

³⁹ *Id.* The sample card in AO 2006-17 also contained suggested contribution amounts, clearly labeled them "recommended amounts per pay period" and explicitly stated "[t]he recommended contribution amounts listed above are merely suggestions. Employees may choose to give more or less than those stated. [Requestor] will not favor nor disfavor employees according to pledged donations." The card also provided a blank space for employees to write in the exact amount they wished to contribute.

⁴⁰ Factual & Legal Analysis at 1-2, MUR 5681 (High Point Assn. of Realtors). This matter also included allegations that the trade association regularly displayed the names of non-contributing members on an overhead projector at its monthly and annual meetings. First Gen. Counsel's Rpt., MUR 5681. However, OGC opined that the projection of names "by itself, does not appear to constitute a violation" of 52 U.S.C. § 30118(b)(3), and the Commission ultimately made no finding with respect to that conduct.

1 appropriate notices to ensure the voluntariness of contributions.⁴¹ However, in at least one other
2 matter, the Commission has indicated that, even when a solicitation and non-contributor list is
3 accompanied by the notices required in 11 C.F.R. § 114.5(a)(2)-(4), the notices may not be
4 sufficient to cure the implied threat of job discrimination or reprisal inherent in a solicitation
5 paired with a non-contributor list.⁴²

6 The Complaint first alleges that the Local coerced member contributions by threatening
7 job discrimination against non-contributors. It states that, in the summer of 2011, Phillip
8 McNally, then-business manager of the Local and treasurer of the Arizona State PAC, wrote an
9 article in a magazine distributed by the Local. In the article, McNally stated "the PAC
10 contribution has changed to 0.75% and the new forms will reflect that change. Please be sure to
11 complete a new form by July 1 or your standing as a member of the local may be
12 jeopardized."⁴³ It continues, "the PAC contribution has been increased from \$0.03 per hour to
13 0.75% per hour. It is obvious the majority of our local supports this increase and our ability to
14 create any future success for you and your families through political action rests with each
15 and every member participating by signing the PAC check-off."⁴⁴ Respondents note that, at the
16 time of the magazine article, the SSF was only engaged in non-federal activity "thus to the extent
17 this newsletter article is a solicitation, it was not for a federal political committee."⁴⁵

⁴¹ Factual & Legal Analysis, MUR 5681 (High Point Assn. of Realtors); MUR 5337 (First Consumers Nat'l. Bank) (concluding that an employer's written solicitation that included a noncontributory list was coercive, in part because it failed to include notice of recipients' right to refuse to contribute and notice that the recommended \$50 contribution was merely a suggestion and that individuals were free to contribute more or less).

⁴² MUR 5379 (CarePlus Medical Centers) (concluding that an employer's solicitation that requested "an accounting of the individuals that donate and those that did not" was coercive, despite the employer's subsequent statement that employees "may refuse to contribute without reprisal and contributions . . . are strictly voluntary").

⁴³ Compl. Ex. 2 (emphasis in original).

⁴⁴ *Id.* (emphasis in original).

⁴⁵ Resp. at 4.

1 In making these statements, the Local suggests that political contributions are a condition
2 of membership and threatens job discrimination against those who do not authorize payroll
3 deductions to the SSF. Based on Commission precedent, such conduct may be considered
4 coercive and lacking appropriate notices to ensure voluntary contributions.⁴⁶ However, as
5 Respondents note, the newsletter that included this statement was distributed in "Summer 2011,"
6 potentially before the SSF triggered federal political committee status, which would render the
7 conduct outside our jurisdiction.⁴⁷ Further, the applicable statute of limitations prevents the
8 Commission from pursuing this allegation, as the activity occurred over five years ago.

9 The Complaint next alleges that the Local coerced member contributions by failing to
10 include the appropriate notices on a check-off form used by union members to authorize the
11 deduction of SSF contributions from members' paychecks.⁴⁸ According to the Complainant,
12 who is a union member, the Local adopted the current language on its check-off form in 2011.⁴⁹
13 He submits copies of the check-off form that he signed in 2014 and 2015,⁵⁰ and states that this is
14 the same form that the Local has distributed to all members "for the past several years."⁵¹ Under
15 the heading "Local 469 Political Action Committee," the check-off form states:

16 So that the common interests of Local 469 members to secure jobs,
17 fair wages and safe working conditions can be heard by state and
18 federal politicians, I voluntarily authorize and direct the above-
19 named employer and any signatory to the Arizona Area Pipe

⁴⁶ 52 U.S.C. § 30118(b)(3); 11 C.F.R. § 114.5(a); *see also, e.g.* MUR 5681 (High Point Assn. of Realtors); MUR 5337 (First Consumers Nat'l. Bank); MUR 5379 (CarePlus Medical Centers).

⁴⁷ Respondents argue that the date of publication is significant because at the time, "the SSF was operating as QSLPO and thus to the extent this newsletter article is a solicitation, it was not for a federal political committee." Resp. at 4. As noted above, however, the SSF appears to have triggered federal political committee status in June 2011.

⁴⁸ Attachment 1; Compl. Exs. 3-4.

⁴⁹ Compl. at 5.

⁵⁰ *Id.* Exs. 3-4.

⁵¹ *Id.* at 6.

36 Conciliation Agreement at IV.13, MUR 5337 (First Consumers Nat'l. Bank) (stating that merely including the word "voluntary" once "does not diminish the coercive nature of the solicitations or satisfy the requirements of 11 C.F.R. § 114.5(a)(2)-(4)"); Advisory Op. 1998-19 at 11 (Credit Union Nat'l. Ass'n.) ("While the brochure states that the contributions are 'voluntary' it does not include a statement that there would be no reprisal should the member refuse to contribute. This deficiency would need to be corrected before the brochures could be used in the proposed solicitations."); *see also* Advisory Op. 1988-3 (Pilots Assn.) (requiring SSFs to adhere to 11 C.F.R. § 114.5 to ensure contributions are voluntary).

1 members to elect not to contribute.⁵⁷ In addition, although the check-off form states that the
2 0.75% contribution is "suggested," it does not provide a member with notice that he or she is free
3 to contribute more or less without favor or disadvantage or the opportunity to contribute an
4 alternative amount.⁵⁸ The statement that the suggested amount was "ratified by the Local 469
5 membership" further implies that a member has already committed to giving this amount.

6 Given these facts, Local 469's check-off form does not appear to comply with the
7 notification requirements for voluntary SSF contributions. We therefore recommend the
8 Commission find reason to believe Local 469 and its current federal PAC, Arizona Pipe Trades
9 Local 469 PAC and Aaron Butler in his official capacity as treasurer violated 52 U.S.C.
10 § 30118(b)(3)(C); 11 C.F.R. § 114.5(a)(2), (4)-(5).

11 Finally, the Complaint states that Local 469 coerced member contributions by
12 maintaining a list of members who do not contribute to its political committees. The Complaint
13 attaches a list of "PAC NON-CONTRIBUTORS," showing member names, their respective
14 company names and a column entitled "PAC" for which a zero is filled in for each member.⁵⁹
15 Complainant also attaches pictures of a bulletin board from the union hall where the "PAC
16 NON-CONTRIBUTORS" list was publicly posted adjacent to another list entitled "EXPELLED

⁵⁷ Compare Advisory Op. 2006-17.

⁵⁸ See MUR 5337 (First Consumers Nat'l. Bank) (finding that the solicitation "There are still quite a few managers who have not turned in their \$50.00 contribution for the Oregon Bank PAC. If you have not done so, Mr. Aube would appreciate your contribution check by Friday...." lacked notice that solicitees had right to refuse to contribute without reprisal and that the contribution guideline of \$50 was merely a suggestion and that the individual was free to contribute more or less without favor or disfavor); compare Advisory Op. 2006-17 Ex. 1.

⁵⁹ Compl. Ex. 5. Emails attached to the Complaint show correspondence from Local business manager and committee treasurer Aaron Butler stating that "the Local 469 monthly non-PAC contributor list includes the names of members currently working . . . who have elected to not contribute pursuant to the check-off system provided in that collective bargaining agreement." *Id.* Ex. 6. In a second email responding to Complainant's question of how Butler knows the list is accurate, Butler states that "[o]ur list is pulled directly from our internal software each month, which insures [sic] accuracy." *Id.*

1 MEMBERS.”⁶⁰ Complainant asserts that the non-contributors list “has been publicized at union
2 meetings and PAC presentations for several years” and that he has “personally seen this list
3 publicized at every monthly meeting and PAC presentation he has attended since September
4 2014.”⁶¹ The Complaint identifies at least one meeting, on August 21, 2015, at which counsel
5 and consultant for the Respondents, Israel Torres, made a verbal solicitation while the non-
6 contributor list was visible. He claims that Torres discussed the purpose of the PACs, the PACs’
7 activities, and the benefits to members, and also encouraged support for the PACs.⁶²

8 Respondents do not deny maintaining or publicizing a non-contributors list. The Local
9 argues, however, that its list does not contain a solicitation, and that the union therefore does not
10 coerce contributions by maintaining or posting it.⁶³ Respondents also note that, to the extent that
11 any member decided to contribute as a result of the list, the member would have to use its payroll
12 authorization form and would then see the notices included to ensure voluntariness.⁶⁴ The
13 Response also does not deny that Torres made verbal solicitations of members on August 21,
14 2015 or any other date while the non-contributor list was visible, but it states that the information
15 contained in the Complaint shows that he provided adequate notices to satisfy voluntariness
16 requirements.⁶⁵

⁶⁰ *Id.* Ex. 6. The “EXPELLED MEMBERS” list was also attached to the complaint at Exhibit 5.

⁶¹ *Id.* at 12.

⁶² *Id.* at 16-17.

⁶³ Resp. at 3.

⁶⁴ *Id.* In addition, Respondents state that “in an abundance of caution,” the Local has since adopted a policy of only posting non-contributor lists “with the solicitation notice described by 11 C.F.R. § 114.5.” *Id.* at 6, Ex. 2. This appears to suggest that the Local has begun posting the “solicitation notice described by 11 C.F.R. § 114.5” on the bulletin board alongside its non-contributor list; however, it is not clear what language the Local is using in doing so. That is, it is not clear whether the Local has added the language of the regulation itself or some other variant.

⁶⁵ *Id.* at 6.

68 Compl. at 16.

1 11 C.F.R. § 114.5(a)(2)-(4), Commission precedent indicates that subsequent corrective action
2 does not retroactively cure otherwise coercive solicitations.⁶⁹

3 Accordingly, we recommend that the Commission find reason to believe Local 469 and
4 Arizona Pipe Trades Local 469 and Aaron Butler in his official capacity as treasurer violated
5 52 U.S.C. § 30118(b)(3)(A), (C) and 11 C.F.R. § 114.5(a)(1), (2) and (4).

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⁶⁹ See Conciliation Agreement, MUR 5379 (CarePlus Medical Centers).

IV. RECOMMENDATIONS

1. Dismiss the allegation that Local 469 and the Arizona State PAC violated 52 U.S.C. § 30103 and 11 C.F.R § 102.1(c) and issue a letter of caution;
2. Find reason to believe Local 469 and Arizona Pipe Trades Fed PAC and Aaron Butler in his official capacity as treasurer violated 52 U.S.C. § 30118(b)(3)(C); 11 C.F.R. § 114.5(a)(2), (4)-(5) through use of a deficient payroll authorization form;
3. Find reason to believe Local 469 and Arizona Pipe Trades Fed PAC and Aaron Butler in his official capacity as treasurer violated 52 U.S.C. § 30118(b)(3)(A), (C); 11 C.F.R. § 114.5(a)(1), (2) & (4) through the maintenance and publication of a non-contributors list in conjunction with verbal solicitations;
4. Take no action at this time with respect to Aaron Butler in his individual capacity;
5. Take no action at this time with respect to Phil McNally in his individual capacity;
6. Take no action at this time with respect to Israel G. Torres in his individual capacity;
7. Approve the attached Factual and Legal Analysis;
8. Approve the attached Conciliation Agreement;
9. Approve the appropriate letters.

Lisa Stevenson
Acting General Counsel

Date

Kathleen Guith
Kathleen Guith
Acting Associate General Counsel for
Enforcement

Peter G. Blumberg
Assistant General Counsel

Assistant General Counsel

Meredith McCoy
Attorney

Attorney

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